

**IN THE MATTER OF
BRIDGING FINANCE INC., DAVID SHARPE, NATASHA SHARPE AND
ANDREW MUSHORE**

File No. 2022-9

**NOTICE MOTION OF
ANDREW MUSHORE**

(For an Order for an expedited hearing on the allegations against Mr. Mushore under Sections 16.1 and 25.0.1 of the *Statutory Powers Procedures Act*, R.S.O. 1990, c. S.22)

A. ORDERS SOUGHT

The Moving Party, Andrew Mushore, requests that the Capital Markets Tribunal (the “Tribunal”) make the following orders:

1. an order for an expedited hearing as to the merits of the allegations against Mr. Mushore only and, at the same time, to determine the sanction, if any;
2. directions concerning the conduct of the expedited hearing, including with respect to the Additional Facts (as defined below) and to manage the possibility of inconsistent findings of fact; and,
3. such further and other orders as counsel may advise and the Tribunal may permit.

B. GROUNDS

4. The Respondent, Andrew Mushore, is the former Chief Compliance Officer of the Respondent, Bridging Finance Inc. (“BFI”).
5. Mr. Mushore voluntarily surrendered his registration to the Commission on June 28, 2021 and is no longer associated with any capital markets participant.
6. At all material times, Mr. Mushore took direction from BFI’s Chief Executive Officer and Ultimate Designated Person, David Sharpe.
7. In view of his junior position at the firm and the abusive and toxic workplace fomented by Mr. Sharpe and BFI’s Chief Investment Officer, Natasha Sharpe, Mr. Mushore had no practical agency or authority in terms his activities at BFI, including with respect to the firm’s interactions with its counsel and the Ontario Securities Commission.
8. Mr. Mushore no longer has any contact with the Sharpes and is not cooperating with them in the conduct of this proceeding. In fact, Mr. Sharpe made numerous efforts to intimidate and threaten Mr. Mushore as result of Staff’s investigation and the BFI receivership proceeding that Staff initiated.
9. Mr. Mushore has very limited financial resources. Based on the Statement of Allegations, the receivership proceedings and, more generally, the notoriety of these proceedings, Mr. Mushore anticipates that the adjudication of a combined hearing on the merits involving all parties would take many weeks or months to complete.

10. Mr. Mushore cannot safely assume that, to make full answer and defence to the allegations against him, he would not be prejudiced if neither he nor his counsel were to attend each of the scheduled hearing days.
11. Mr. Mushore does not have access to directors' and officers' insurance or, at this time, indemnity from BFI. Consequently, he has had no choice but to borrow funds to defend himself. Mr. Mushore only has access to sufficient funds for an expedited hearing. Otherwise, he would be self-represented.
12. Apart from the Additional Facts, the substance of Mr. Mushore's entire position respecting these proceedings is set out in a letter dated May 20, 2021 (the "May 20 Letter"), attached as exhibit to the affidavit filed in support of this motion, which current counsel to Mr. Mushore delivered to Staff shortly after being retained. Mr. Mushore intends to supplement the information in the letter with additional context explained in the affidavit filed on this motion.
13. In addition to his evidence filed on this motion, Mr. Mushore will request an opportunity to address the panel on the basis that was accepted by the Ontario Securities Commission in *Re Dornford*, (1998), 21 O.S.C.B. 7499.

The Additional Facts

14. There are two additional facts that are not addressed in Mr. Mushore's May 20 Letter that Mr. Mushore anticipates will be relevant to the expedited hearing (the "Additional Facts"). The first is whether Mr. Mushore was aware of, and concealed, the Sharpes' alleged misappropriation of \$40 million from BFI's Mid-Market Debt Fund LP (the MM Fund) in September 2018 through a series of transactions involving 3319891 Nova Scotia Company

and River Cities Investments LLC (the “River Cities Loan”). The second additional fact pertains to loans made to entities associated with Gary Ng.

(i) *The River Cities Loan*

15. On August 18, 2022, as required by the Tribunal’s Rules of Procedure, Staff produced witness summaries setting out the evidence that it will rely on at the hearing of this matter.
16. Neither the witness summaries nor the documents accompanying those summaries support the allegation against Mr. Mushore relating to the River Cities Loan, apart from a single sentence in a witness summary that Mr. Mushore was involved with “paperwork” for this transaction.
17. In his compelled testimony, Mr. Mushore was completely candid about his involvement with this loan and his understanding that the “back-to-back” nature of the loan was permissible and supported by a legal opinion of Blake, Cassels & Graydon LLP. Mr. Mushore was also not aware that the River Cities Loan involved any unlawful misapplication of assets from the MM Fund, or any other BFI fund.

(ii) *The Gary Ng Loans*

18. The Statement of Allegations alleges, without particulars, that certain loans made to entities associated with Gary Ng while he was contemplating acquiring an interest in BFI and in the months thereafter gave rise to a conflict of interest. Mr. Mushore is alleged to have voted to approve certain of these loans.
19. Mr. Mushore has explained his rationale for supporting these loans in his affidavit on this motion.

(iii) Conclusion on the Additional Facts

20. There is nothing in the witness summaries or documents shown to Mr. Mushore to contradict his evidence on the River Cities Loan, the loans to entities associated with Gary Ng or that Mr. Mushore is not approaching this matter with the same candour as expressed in his letter to Staff respecting other relevant issues to the allegations against him. Consequently, these issues can be addressed efficiently at an expedited hearing.

Mr. Mushore's Cooperation with the Investigation

21. As stated above, promptly after retaining counsel independent of BFI and the Sharpes, Mr. Mushore delivered the May 20 Letter. Among other things, Mr. Mushore elaborated on his earlier evidence in an attempt to correct any misunderstanding. Mr. Mushore endeavoured to be completely candid in his subsequent compelled interviews and answered Staff's questions to the best of his ability and recollection.
22. Contrary to the allegation that Mr. Mushore made misrepresentations to Staff in the course of his compelled examinations, Mr. Mushore does not believe that he made any material misstatement on a compelled interview and especially none that was not subsequently and promptly corrected in subsequent correspondence and testimony.
23. In this regard, one of Staff's witness summaries references the fact that one of Staff's own witnesses was not only coached by Mr. Sharpe on his anticipated compelled testimony before the Commission but that he had to clarify or correct certain statements. That individual is not a respondent in this proceeding.

Combined Merits and Sanctions Hearing

24. In the circumstances of this case, principles of deterrence as expressed in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600, are not severable from any question of “merits”. The only relevant question in this case is whether, prospectively, anything more needs to be done to protect the capital markets from Mr. Mushore now that he is no longer a participant and has no intention to become one.
25. A sanction based on general deterrence ought not to be applied in this case. The Commission violated Mr. Mushore’s rights and s. 16 of the *Securities Act*, R.S.O. 1990, c. S.5 when it filed the transcript of his compelled evidence in the BFI receivership proceeding. This negates any sanction against Mr. Mushore based solely on general deterrence on the basis that Staff itself needs to be deterred from disregarding the rights of other market participants in the future. Put simply, Mr. Mushore submits that general deterrence is a two-way street.

An Expedited Hearing is Appropriate

26. An expedited hearing is warranted in the circumstances of this case for the following reasons, among others:
 - (a) Mr. Mushore will suffer material prejudice if he is forced to attend a lengthy hearing without the benefit of counsel;
 - (b) in view of the complexity of the allegations against the remaining respondents and the prominence of this matter, no amount of case management could address this prejudice to Mr. Mushore;
 - (c) the allegations against Mr. Mushore have only tangential relevance, both legally and factually, to the allegations against the other respondents;

- (d) the evidence related to Mr. Mushore is straightforward and essentially uncontested; and
- (e) if this motion is granted, procedural safeguards can be put in place to avoid inconsistent findings of fact and any potential for prejudice to the other respondents.

C. EVIDENCE

The Moving Party intends to rely on the following evidence at the hearing:

- a) the affidavit of Andrew Mushore sworn September 2, 2022.

DATED this 2nd day of September, 2022

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